Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 334

LOCAL UNION NO. 1206, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ET AL.,

Petitioners,

vs.

MARTIN MARIETTA CORPORATION; DISTRICT 50, UNITED MINE WORKERS OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT, MARTIN MARIETTA CORPORATION, IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 334.

LOCAL UNION NO. 12405, DISTRICT 50, UNITED MINE WORKERS; JOSEPH J. PIUNTI; ET AL.,
Petitioners,

vs.

MARTIN MARIETTA CORPORATION; DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT, MARTIN MARIETTA CORPORATION, IN OPPOSITION.

QUESTIONS PRESENTED.

1. In a Section 301(a) action,[1] is a district court required to direct arbitration upon demand of a Local Union and individual employees, against the opposition of the governing International Union, when the contract provides that the International Union is indispensable for referral to arbitration?

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1. Suits in district courts of the United States for violation of certain union contracts are authorized by Section 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. § 185(a).

2. Is a court required to direct arbitration which would affect the interests of strangers to the contract, of two different unions at distant plants (in Michigan and Missouri, whereas the dismantled plant site is in Illinois) and of a new purchaser-employer of the other plants, when these strangers and the employees at the other plants (subject to possible job loss under an award) would not be parties to the arbitration?

3. Is a court required to direct arbitration of asserted demands for inter-plant seniority and guaranteed pay of laid-off employees, where such unprecedented demands are clearly not supported by any contract provision, upon permanent closing and dismantlement of the plant, solely on the basis that a part of the equipment of the old plant was shipped to the other, established plants?

4. When the General Counsel of the National Labor Relations Board declined to issue a complaint upon charges that an employer had refused to meet with one of several union representatives, his action being primarily based upon the persuasive effect of the Court of Appeals decision below, may such action be fairly viewed as a "determination" by the Labor Board contrary to the court decision?

STATEMENT.

The courts below both found that District 50 was indispensable to a referral to arbitration. The District Court found:

> "14. Under the terms of the Wage Agreement, District 50 is an indispensable party at steps three and four of the grievance procedure and in any arbitration. . . .
>
> "16. At step three of the grievance procedure established in the Wage Agreement, District 50 contended that the grievance of the Local 'was invalid' and District 50 'did not recognize it as such'.

"17. On or about November 21, 1962, the Local served a demand for arbitration on the Company. This demand was not joined in by District 50.

"18. The demand by the Local for arbitration, and the grievance procedures antecedent to it, were not in conformity with the provisions of the Wage Agreement." (App. 251-2.)[2]

The Court of Appeals found as follows:

"Under the collective bargaining agreement with Martin, only the 'Union' may refer grievances to arbitration. The agreement sets out the parties thereto as:

> "PRESSITE DIVISION, AMERICAN-MARIETTA COMPANY, whose plant is located at Chicago Heights, Cook County, Illinois (hereinafter referred to as the 'Company') and DISTRICT 50, UNITED MINE WORKERS OF AMERICA, on behalf of Local Union No. 12405 (hereinafter referred to as the 'Union').

"There are a number of provisions throughout the agreement, which, in our opinion, show that District 50 is the 'Union,' e.g. 'Union Dues' are to be sent to District 50 in Washington, D.C., which is to furnish written assignments; the fourth step of the grievance procedure outlined in the agreement refers to the field representative and the regional director of the 'Union,' and the Local has no such officers. The wording of the pension fund which is entitled:

> "The District 50, United Mine Workers of America and Keystone Asphalt Products Company, a Division of the American-Marietta Company Pension Agreement.

also bolsters the conclusion that the 'Union' is District 50 and not the Local." The latter is designated as

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2. Petitioner has filed ten copies of its Appendix below, and of Petitioner's "Petition for Rehearing" below. The Company has filed ten copies of its "Brief" and its "Answer" below to the Petition for Rehearing. References to these respective documents appear herein as "App.", "Pet. for Rehg.", "Co. Brief", and "Co. Answer." References to the Petition for a Writ of Certiorari appear as "Pet."

'Local Union,' for example, in the reference to a joint committee selected by the Union and the Company to administer the pension fund, two to be appointed by the Company and two 'by the Administrative Officer of District 50 * * * one of whom shall be a member of the said Local Union * * * '' .

* * * * *

"Under the procedures set out in the collective bargaining agreement, the first and second steps of the grievance procedure do not require District 50 participation. A representative of District 50 must join in the third step. At the fourth step:

> "The grievance will then be referred for the consideration of the local grievance committee, the Field Representative and the Regional Director for the Union and the President of the Company or any of his representatives. * * * If a grievance is not satisfactorily adjusted * * * in step four (4) above, then it may be referred by the Union, * * * to arbitration.

"District 50 was indispensable to step four which could not be bypassed by plaintiffs' own attempt to demand arbitration." (Pet. 6a, 8a-9a.)

There was no transfer of operations from Chicago Heights to other plants. The court below found as follows:

"Although nothing was apparently said to District 50 about transfer of operations, plaintiffs asserted in the complaint and in their brief on appeal that Martin was not going out of business in Chicago Heights but was merely transferring most of its operations from Chicago Heights to other plants. Plaintiffs' counsel agreed in the District Court that Martin did have a right to go out of business or discontinue 'the work which had been done in the Chicago Heights operation' (as District 50 representatives had advised the Local) and that he would not object to that. *The District Court did not find however that there was any transfer of operations from the Chicago Heights plant to other plants.* There was evidence to support the District Court's finding that:

> "22. In November and December, 1962, and thereafter, the Company disposed of the operating equipment of its Chicago Heights, Illinois, plant by selling some items to outside persons, by transferring some items to its Jackson and St. Louis plants, and by scrapping the rest." (Pet. 5a, italics added.)

The contract provides for lay-offs without stipulation for pay (App. 21) and for management rights to "direct and control plant operations . . ., relieve employees from duty because of lack of work or for other legitimate reasons. . . ." (App. 16.) No provision is made for permanent shutdown, and no guaranty of work is expressed except that foremen shall not perform physical work (App. 15). "Plant seniority" is established without any provision for inter-plant seniority rights (App. 20-21).

Other unions with contracts represented Company employees at the Jackson, Michigan, and St. Louis, Missouri, plants (App. 177, 252; Pet. 4a). As of July 1, 1963, these plants were sold to Interchemical Corporation which has owned and operated them since that time (Co. brief, p. 6). The Local has not joined these other unions or Interchemical as parties to this litigation.

The Local filed charges of unfair labor practice with the National Labor Relations Board against the Company; the Regional Director's reason for refusing to issue complaint was stated as follows:

> "Investigation of this matter reveals that the Company has unconditionally offered to meet and bargain, upon request, with representatives of District 50, United Mine Workers of America and its Local Union No. 12405, whoever they may be. In view of this Commitment, it would not effectuate the purposes of the Act to issue complaint in this matter. Therefore, I am refusing to issue complaint at this time." (Pet. for Rehg. p. 8.)

After the Local appealed from the Regional Director's ruling to the General Counsel of the Board, the latter sustained it as follows:

> "This Office sustains the ruling of the Regional Director. It was concluded, apart from other considerations, that the Seventh Circuit Court of Appeals decision in *Local Union No. 12405 et al. v. Martin Marietta Corporation and District 50, United Mine Workers of America*, 55 LRRM 2592, that District 50 was the sole collective-bargaining agent empowered to refer a grievance to arbitration, rendered further proceedings herein unwarranted." (Co. Answer, pp. 5-6.)

There was no other "determination" of the Board relating to this matter. No complaint was issued, and no proceedings had before a Trial Examiner or the Board. No finding was made by the Board, or by any Board agent, that the Local was a party to the 1961 contract, or that it could compel arbitration in opposition to District 50. The General Counsel concurred with the court below that it could not.

REASONS FOR DENYING THE WRIT.

1. Petitioners' assertions about a plant removal and a transfer of operations are contrary to the evidence and findings of both courts below. Their view of contract construction, of the Local's power under the contract to compel arbitration in the face of opposition from District 50, is contrary to that of both courts below and of the General Counsel of the National Labor Relations Board.[3] This Court normally will not grant certiorari to review issues of fact and contract construction.[4]

2. Their contention that the decision below is in direct

3. A union should be free to sift out frivolous grievances—*Humphrey* v. *Moore*, 375 U. S. 335, 84 S. Ct. 363, 372; and see *Ford Motor Company* v. *Huffman*, 345 U. S. 330, 338.

4. *Graver Mfg. Co.* v. *Linde Co.*, 336 U. S. 271, 275.

conflict with the *Wiley* decision[5] of this Court is untenable, since *Wiley* involved a merger wherein all predecessor obligations were assumed by the surviving entity.[6] This case involves the unique situation of a dissident Local's attempt to obliterate the powers and contract rights of its own international union, and to ignore the existence and rights of two other unions and the employees at the Jackson and St. Louis plants of the Company. Under these circumstances, the permanent shut-down and dismantlement of the Chicago Heights plant present facts of an entirely different order than those involved in *Wiley*.

3. Petitioners invoke the *Kimball* decision of the Seventh Circuit as a part of their effort to show disregard of *Wiley*; however, the *Kimball* situation involved a plant removal under still different circumstances, and the court expressly distinguished the *Wiley* holding in its decision.[7] The instant petition has no relation to further litigation of the *Kimball* case.

4. Petitioners argue that the indispensability of District 50 to any referral to arbitration is a "procedural" matter which is necessarily an issue solely for an arbitrator, as if the semantics of classification were more important than jurisdictional substance. The substantial bargain of the parties here required that District 50 control the referral to (and presumably the conduct of) arbitration. No arbitration was contemplated without District 50. None was possible when opposed by District 50. So basic an issue was clearly a question for the court. This Court said in *Atkinson*:

"Under our decisions, whether or not the company was

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5. *Wiley & Sons, Inc. v. Livingston*, 376 U. S. 543.

6. *Corpus Juris Secundum*, Vol. 20, § 1897; *Helvering v. Metropolitan Edison Co. and Pennsylvania Water & Power Co.*, 306 U. S. 522, 529.

7. *Piano and Musical Instrument Workers, Local 2549 v. W. W. Kimball Company*, 7 Cir., 333 F. 2d 761.

bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties.'"[8]

5. Petitioners have made no effort to join the other two unions or the current owner of the business in this litigation which is thus limited for purposes of available remedy, in view of the absence of parties indispensable for any other remedy, to a damage action against the Company. In Count II of their complaint, the petitioners alleged a damage action (App. 12-13); however, their Petition to this Court presents three arbitration questions and no damage question (Pet. 2-3). Accordingly, the Petition does not present a proper question for the consideration of this Court.

6. Petitioners' arguments about a conflict between the court below and the National Labor Relations Board proceed from a distortion of facts. There is no conflict. Both tribunals concurred that District 50 is indispensable to arbitration.

CONCLUSION.

For the reasons stated, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 19, 1964.

8. *Atkinson* v. *Sinclair Refining Company*, 370 U. S. 238, 241.